

APPEAL NO. 93159

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). On September 30, 1992, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. In Texas Workers' Compensation Commission Appeal No. 92611, decided December 30, 1992, we reversed and remanded the decision of the hearing officer because the designated doctor's report was incomplete in failing to specify if, and how, the American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA Guides), third edition, had been used. The hearing officer on remand, with agreement of the parties, submitted questions to the designated doctor, (Dr. D), with copies to the parties. Dr. D's response was that he had used the proper version of the AMA Guides, that he had considered range of motion (ROM), and explained why the doctor considered the ROM tests invalid. The hearing officer incorporated the original decision, including findings of fact and conclusions of law, as part of this decision. The hearing officer determined that claimant had reached maximum medical improvement (MMI) on June 16, 1992 with a five percent impairment rating and that the designated doctor's opinion is not outweighed by the great weight of the other medical evidence.

Claimant appeals this decision urging that his treating doctor's opinion constitutes the great weight of other medical evidence. Carrier did not file a response.

DECISION

Determining that the curative action required by our remand has been taken and that there is sufficient evidence to sustain the hearing officer's findings and conclusions, we affirm the decision.

The hearing officer officially noticed the complete record and decision from the original hearing. The evidence considered in the earlier hearing in this case was set forth in our previous decision and will not be repeated here. Appeal No. 92611, *supra*. As noted above, on remand, and with agreement of the parties, the hearing officer submitted additional questions to the designated doctor, who responded, confirming use of the proper AMA Guides and explaining reasons why he had considered the ROM tests invalid. As we noted in our earlier decision, Appeal No. 92611, a designated doctor's report has presumptive weight (Articles 8308-4.25 and 4.26 of the 1989 Act) which can be outweighed only by the great weight of other medical evidence. The hearing officer determined that the certification of MMI and impairment rating of the designated doctor were not contrary to the great weight of the other medical evidence. There is sufficient evidence to support the hearing officer's decision. The relevant evidence offered by the claimant was that of the treating doctor. We have observed that no other doctor's report, including a report of a treating doctor, is accorded the special presumptive status that the designated doctor's report has. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992.

Finding sufficient evidence to support the determinations of the hearing officer and concluding that those determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, the decision is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

CONCURRING OPINION:

I concur with the result reached herein; however, as noted in my dissent in Appeal No. 92611, I would have affirmed the hearing officer's original decision which accepted the designated doctor's determination of MMI and impairment based on his TWCC-69 and accompanying report.

Lynda H. Nesenholtz
Appeals Judge